

OGC Has Reviewed

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Dear Mr. Jones:

This is in reply to your request of December 18 for comments on the bill submitted by the Central Intelligence Agency to amend the Central Intelligence Agency Act of 1949, as amended, and for other purposes.

It appears that it is the purpose of CIA to incorporate in its own legislation all of the authorities relating to various benefits and privileges provided for overseas Government personnel. This is contrary to one of the established objectives of this Administration; namely, to consolidate insofar as possible various existing authorities into single statutes to assure uniform applicability on a government-wide basis. An alternative treatment, which we believe would accomplish much the same purpose for CIA, is suggested later in this letter. With reference to the bill submitted, following are our comments on the individual sections which are within the area of interest of this office.

Section 1 adds to the definitions in the bill a definition of "abroad," to mean foreign areas, Trust Territories of the Pacific Islands, and bases leased by the United States in foreign areas, but excluding the Canal Zone and the Territories and possessions of the United States. This would answer certain objections made by this office to the language of the bill submitted to the 84th Congress since it would exclude employees in the Territories and possessions from certain of the benefits provided, particularly with reference to allowances, hospitalization, leave etc. On the other hand, it would seem to present certain problems insofar as CIA is concerned, since it would limit all the provisions under Section 3 of the draft legislation (Sec. 5 of the CIA Act) to the areas covered by the definition whereas certain of these authorities should not be so limited. These are the various travel and transportation authorities, storage expenses, leave travel, home leave provisions, etc. In view of our subsequent comments, CIA may want to reconsider this item.

Section 3 amends Section 5 of the CIA Act. The introductory statement of this section as amended would read "under such regulations as the Director may prescribe, the Agency, with respect to its officers and employees assigned abroad, may . . . Subsections (a)(1), (2), (5), (6), and (9) relate to travel and transportation expenses for employees, dependents and effects, and expenses for storage of effects. These authorities should be available not only for employees assigned abroad as defined in Section 1 but should also be available for employees assigned anywhere outside the continental United States.

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Subsections (a)(4) transportation of automobiles, (7) movement of employees, dependents and effects from posts where disturbed conditions constitute imminent danger to life and property, and (8) transportation of dependents for education purposes are identical with provisions in the Foreign Service Act. Such authorities should apply to all areas outside the continental United States, its Territories and possessions. It might be mentioned that with reference to transportation for education purposes, the language of the proposed Allowances bill specifically authorizes this provision for United States citizen employees in the Canal Zone even though other parts of that title of the bill do not cover Canal Zone employees.

Subsection 5(b) authorizes use of the appropriation current when travel or transportation begins for payment of all the expenses involved even though such travel or transportation is not completed until the next fiscal year. This authority is already available to CIA insofar as permanent change of station actions are concerned, and the amendment is to extend it to cover temporary duty travel as well.

Subsection 5(c) relates to leave. Subsection (1) is a modification of authority already available to CIA, to order return of employees to the United States, its Territories and possessions for leave purposes after two years continuous service abroad. In view of Section 5(e) which relates to payment of travel and transportation costs of individuals appointed in foreign countries and assigned elsewhere, it would seem that CIA would find it desirable either to utilize the authority contained in P. L. 737, 83rd Congress, with proper modification of the language of Subsection 5(a)(1); or to change the language of this subsection of the CIA Act to conform more nearly to P. L. 737 in order to be able to pay travel and transportation costs for such employees who want to return to their places of residence on leave.

Subsection 5(c)(2) relates to service of employees while in the continental United States on leave. This is copied from a similar provision in the Foreign Service Act, but we are unable to determine the purpose or necessity of the provision. It would seem that this could be adequately covered in agency regulations rather than in the legislation.

Subsection 5(c)(3) provides that transit time in connection with return to the United States, its Territories or possessions for leave purposes shall not be chargeable to leave. This provision is already available to CIA under Section 203(e) of the Leave Act P. L. 233, 82nd Congress. However, it occurs to us that if CIA has any substantial numbers of foreign nationals who are appointed in foreign countries and assigned to other countries for service, there might be a need for similar authority with reference to transit time in connection with leave

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travel by such employees in returning to places other than the continental United States, or its Territories and possessions. CIA might want to consider modifying the language of this subsection to avoid the present limitation.

Subsection 5(c)(4) extends the statutory home leave authority, now applicable to Foreign Service employees, to CIA employees. As stated by CIA, if proposed amendments to the Leave Act are enacted, there would be no need for the proposed section. There is no objection to inclusion of this provision in the CIA Act on an interim basis.

Subsection 5(d) covers various medical and hospitalization provisions. Subsection (d)(1), (2)(A), (2)(B), and (2)(C) are identical to the provisions now incorporated in the Foreign Service Act as amended by P.L. 828, 84th Congress, and the authorities should apply only to areas outside the United States, its Territories and possessions. Since these provisions are in line with provisions of the government-wide bill which is expected to be submitted to the next session of Congress, covering medical care provisions for overseas employees of the government, there is no objection to their inclusion in the CIA Act.

Subsection 5(d)(3) authorizes establishment of first aid stations and is identical to the authority available to the Secretary of State under the Foreign Service Act as amended. This office has no objection thereto, provided that the authority is not exercised if another United States government medical facility already exists at a post.

Subsection 5(d)(4) is based on Section 943 of the Foreign Service Act as amended, authorizing physical examinations of employees and dependents and the administration of inoculations and vaccinations. However, it is noted that CIA has not included applicants, and it would seem to us that it would be desirable to extend the authority to permit physical examinations for applicants as well as employees.

Subsection 5(e) is the same as Subsection 5(a)(7) of the present law, authorizing payment of travel and transportation costs for individuals appointed in foreign countries for assignment away from the place of residence at time of appointment.

Subsection 5(f) would include in the CIA Act basic authorities for payment of allowances and differentials, in place of the present provision which authorizes such payments in accordance with the provisions of certain cited sections of the Foreign Service Act. The language of the proposed legislation is based on but is not identical to present provisions of the Foreign Service Act as amended and the provisions of the proposed government-wide Allowances bill.

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This office is strongly opposed to the proposed change since it is a move away from the Administration's policy of consolidation of basic authorities which should be uniform for all United States Government employees serving under like conditions. It is our belief that present authorities, by referring to applicable sections of the Foreign Service Act, are adequate for CIA and, pending government-wide legislation, assures maintenance of a maximum degree of uniformity in application. Insofar as differentials are concerned, CIA is covered in the same manner as are all other agencies, under 5 U.S.C. 118(h). There seems to be no reason for including such authority in the CIA Act. Such separate authority might lead to agency regulations which would provide different ground rules from those applicable to other agencies.

Differences in the CIA language from present or proposed allowance provisions are as follows: With reference to the temporary lodging allowance, the Allowances Bill would permit payment at termination only if expenses for temporary lodgings were in fact incurred, which restriction was omitted from the CIA language. CIA language retains language of the Foreign Service Act which would permit payment of temporary lodgings allowances "not in excess of the aggregate amount of per diem that would be allowable to such officer or employee for himself and the members of his family for such period if they were in travel status." This language was deleted from the Allowances Bill since it was felt that it might invite establishment of excess rates. Per diem rates include both lodging and subsistence, whereas the temporary lodging should cover only lodgings based on going hotel room rates. The temporary lodging allowance rate would, of course, be higher than the regular quarters allowance rate, but should be well below the per diem rate. It might be mentioned that the employee would continue to receive any cost of living allowances applicable to the post in addition to the temporary lodging allowance. Should the latter rate be based on per diem rates, which take into account certain high living costs, some duplication in payment of certain basic costs might occur.

With reference to cost of living allowances, CIA retained the language of the Foreign Service Act which authorizes payment of such allowances at foreign posts "where the cost of living is proportionately so high that allowances are necessary to enable the employee to carry on his work efficiently." Since this language does not specify the basis for determining when cost of living is proportionately too high, the language of this provision was changed in the Allowances Bill to require comparison with cost of living in Washington, D. C.

Section 6 adds a new section to the CIA Act regarding retirement provisions for CIA employees who serve abroad. This would provide that in computing creditable service for annuity purposes, each year of service abroad, retroactive to September 18, 1947, would be credited

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as one and one half years, and that each year of service at posts classified as unhealthful by the CIA Director would be credited as two years of service. It is further provided that the retirement ages prescribed in the Civil Service Retirement Act shall be lowered by the number of months of extra service granted under the preceding provision. A restriction is provided that voluntary retirement shall be allowed only with the approval of the Director, after age 50 with 20 years of actual service.

The section analysis states that the proposed provisions, permitting early retirement at full annuity, are analogous to provisions applicable to authorized investigative employees and Foreign Service Officers; that the demands of many agency positions and the tensions imposed upon employees doing the peculiar work required, combined with extremely unfavorable climatic and sanitary conditions in many foreign areas make such work most suitable for relatively young men; that after overseas service has ceased it may not be possible to place these employees in headquarters positions at attained grades; that the agency must be able to offer early retirement with an annuity which makes retirement economically feasible in order to be able to keep a young and vital work force to carry out its exacting activities by being able to offer younger employees reasonable opportunities for advancement to more responsible positions rather than filling such positions with older men whose greatest contributions are in the past.

While there appears to be a justification for better retirement provisions for some of the agency's overseas positions, it is our opinion that the present proposal is excessively generous. It is difficult to believe that all of the overseas CIA employees are subjected to the degree of tension and hazard described in the section analysis. It is more likely that many of them are concerned with fact-gathering and subjected to no more tension or hazard than employees of other agencies stationed at the same post who have somewhat similar responsibilities.

Attention is called to the fact that investigative people get no extra credit for any part of their service. The Retirement Act provides that subject to certain conditions, such employees are permitted to retire at age 50 after 20 years of service at full annuities computed at 2%. Foreign Service Officers likewise are not granted extra credit for service at posts involving extraordinarily difficult conditions unless they have waived payment of any applicable post differential in order to obtain such extra credit. Prior to amendment of the Foreign Service Act by P. L. 22, 84th Congress, Foreign Service Officers were not eligible for post differentials, but they were granted extra service credits of 6 months for each year of service at certain differential posts.

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As proposed by CIA, its employees who serve abroad would be entitled both to any applicable post differentials and extra service credits which would double the actual time served at extremely difficult posts, and extra credits of six months for each year of service at any post abroad. With the increases in the annuity computation rates effected by P. L. 854, 84th Congress, which now provides that all service over 10 years be computed at 2%, CIA's proposal would provide for its employees abroad retirement terms far more generous than are presently available to any other group of United States Government employees. This office cannot support such a proposal, but would suggest that CIA develop a proposal which would be more nearly comparable to the provisions applicable to investigative personnel, without provision for extra service credits unless developed along the lines now applicable to Foreign Service Officers.

Section 7 would increase from 15 to 35 the number of retired officers of the armed services who could be employed by CIA, to which this office has no objection.

Referring to our statement at the beginning of this letter, this office would again like to repeat that this legislation is contrary to the Administration's policy of consolidating existing authorities and we do not believe it should be submitted in its present form. As stated, we have prepared a suggested alternative for Section 5 of the CIA Act, which is attached, which we believe would accomplish the same purpose aimed at by the agency. It has the advantage of utilizing existing statutes as the basis for the agency's authorities and would automatically be amended as such existing authorities are amended or replaced by other legislation without the need to amend the CIA Act itself. We would like to suggest that CIA give serious consideration to language along these lines for Section 5 of their Act.

Sincerely,

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Attachment

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